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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|-----------------------|----------------------|------------------|
| 10/530,743 | 04/08/2005 | Delford Ian Christmas | 102792-439 (11112P3) | 2473 |
| 27389 | 7590 | 08/10/2006 | EXAMINER | |
| NORRIS, MCLAUGHLIN & MARCUS | | | DELCOTTO, GREGORY R | |
| 875 THIRD AVE | | | ART UNIT | |
| 18TH FLOOR | | | PAPER NUMBER | |
| NEW YORK, NY 10022 | | | 1751 | |

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/530,743

Applicant(s)

CHRISTMAS ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments and amendments filed 5/24/06 have been entered.

Claims 1-9, 11, and 12 are pending. Claims 10 and 13 have been canceled.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 1/25/06 have been withdrawn:

The objection to claims 1-12 because of minor informalities has been withdrawn.

The rejection of claims 1-12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, has been withdrawn.

The rejection of claim 6 under 35 U.S.C. 103(a) as being unpatentable over Choy et al (US 5,554,321) or EP 649,898 as applied to claims 1-5 and 8-12 above, and further in view of WO 96/35771 has been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 1-9, 11, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claim 1, the specification, as originally filed, provides no basis for "at least one colloid-forming clay in an amount up to 1% by weight" as now recited by instant claim 1. While Example 21 provides basis for 1% by weight of Gelwhite H NF (montmorillonite clay), the specification provides no basis for 1% by weight of any other colloid-forming clay or 1% by weight of the generic group of colloid-forming clays. Thus, this is deemed new matter. Claims 2-9, 11, and 12 have also been rejected due to their dependency on claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Luciani et al (US 6,268,325).

Luciani et al teach a cleaning composition containing 1% to 10% by weight of a colloid forming material, 0.5% to 10% by weight of a polymeric thickener, 1% to 60% by weight of abrasive particles, and a bleaching agent. Such a composition can stably suspend the abrasive particles and has the desired rheological properties for a cleaning composition for use on hard surfaces such as ceramic bathroom fittings and toilets. See Abstract. Preferred colloid forming materials include clays such as Laviotix P1. Preferred polymeric thickeners include copolymers of acrylic acid such as Acusol 810A. Suitable abrasive materials include calcium carbonate, pumice stone, calcite, etc. The bleaching agent is preferably a halogen based bleach such as sodium hypochlorite, etc. See column 2, lines 1-55. Surfactants may also be used in the compositions and include amine oxides (Aromox), alkyl ether sulphates, alkyl sulphates, etc. The preferred pH of the compositions is a pH of 13 to 14, particularly 13.4. See column 3, lines 35-60. Note that, claim 26 teaches a composition containing a mixture of cocodimethylamine oxide and sodium lauryl sulfate as surfactant.

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Specifically, Luciani et al teach a compositions containing 2.7% Laviotix P1, 1% Acusol 810A, 5% calcium carbonate abrasive, 9% sodium hypochlorite, 0.1% Aromox DMM CD-W, 4% NaOH (50%), 0.18% titanium dioxide, 0.07% perfume, 1% dye, and the balance water. See column 4, lines 20-35. Luciani et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Luciani et al anticipate the material limitations of the instant claims.

Claims 1-6, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Choy et al (US 5,554,321) or EP 649,898.

Choy et al teach a thickened, liquid abrasive cleanser with enhanced long-term phase and viscosity stability and improved rinsability comprising in aqueous solution a cross-linked polyacrylate, at least one nonionic surfactant, a pH adjusting agent, and a calcium carbonate abrasive. See column 2, lines 15-30. Suitable surfactants include amine oxide surfactants, etc. See column 5, lines 45-69. Additionally, cosurfactants may be used in the compositions including alkali metal alkyl sulfates, alkyl aryl sulfonates, etc. See column 7, lines 45-60. Suitable abrasives include calcium carbonate, etc. See column 9, line 55 to column 10, line 15. Oxidants are preferred for their cleaning activity and particularly preferred are halogen bleaches such as sodium hypochlorite, etc. See column 10, lines 20-55. Where the active halogen source is sodium hypochlorite, the pH is preferably above or about pH of 12. See column 8, lines 50-69.

Specifically, Choy et al teach 0.3% cross-linked polyacrylate, 1% LAS, 0.5% amine oxide, 0.5% NaOH, 40% calcium carbonate, 0.2% adjuncts, and the balance

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water. See column 12, lines 15-30. Choy et al disclose the claimed invention with sufficient specificity to constitute anticipation.

'898 teaches a phase stable, thickened aqueous abrasive cleanser and a method for preparing it, said cleanser containing an effective amount of a cross-linked polyacrylate, an effective amount of at least one bleach-stable surfactant, an effective amount of a low salt, high purity hypochlorite, an effective amount of a pH adjusting agent, an effective amount of abrasive, and the balance water. See Abstract. Suitable polyacrylates are sold under the tradename Carbopol. See page 4, lines 15-55. Suitable surfactant include amine oxides. Additionally, a cosurfactant may be used which includes alkyl sulfates, etc. See page 5, line 15 to page 6, line 45. Suitable abrasives include calcium carbonate, etc. See page 8, lines 15-50. Hypochlorite bleach may also be used in the compositions including potassium hypochlorite, sodium hypochlorite, etc. When hypochlorite bleach is used in the compositions, the pH is preferably above or about pH 12. See page 7, lines 20-60.

Specifically, '898 teaches a composition containing 7.47% potassium hypochlorite, 30% calcium carbonate, 1.24% amine oxide, 28% cross-linked polyacrylate, 0.04% fragrance, etc., and the balance water. See page 10, lines 1-45. '898 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the broad teachings of Choy et al or '898 disclose the claimed invention with sufficient specificity to constitute anticipation.

Claims 1, 4, 6, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/35771 or GB 2,311,996.

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'771 teaches a thickened stable hard surface cleaner comprising by weight from about 10 to about 30% abrasive particles, from about 0.5 to about 2.5% of a chlorine-containing bleach, from about 0.5 to about 3% of a thickening system comprising a cross-linked polyacrylate resin and a synthetic smectite clay, from about 0.25 to about 2% of a bleach stable surfactant system, from 0 to about 3% of an electrolyte, and sufficient amount of sodium or potassium hydroxide to attain a pH in the range of 11.5 to 13.5. See Abstract. Suitable polyacrylate polymers include those under the trademark Carbopol. See page 6, lines 20-30. Suitable bleach-stable surfactants include betaines, sarcosinates, taurates, alkyl sulphates, alkyl sulphonates, etc. Preferred alkyl sulphonates are sold under the trademark Hamposyl SAS. See page 8, line 5 to page 9, line 10.

Specifically, '771 teaches a compositions containing 0.5% Carbopol 695, 2% Laponite RD, 0.325% sodium carbonate, 0.74% sodium hydroxide, 1.2% sodium hypochlorite, 20% calcium carbonate, 1% dodecyl diphenyloxide disulphonate, 1% Hostapur SAS, 0.05% fragrance, and the balance water, wherein the composition has a pH of 13.1. See page 20, lines 1-15. '771 discloses the claimed invention with sufficient specificity to constitute anticipation.

'996 teaches a hard surface scouring cleaner composition containing from about 0.5 to 10% abrasive particles, from about 0.5 to 2.5% of a chlorine-containing bleach, from 0.2 to 3% of a thickening system comprising a polyacrylate and a synthetic clay, from 0.25 to 3% of a bleach-stable surfactant comprising anionic surfactants, from 0 to 3% of an electrolyte, and a sufficient amount of sodium or potassium hydroxide to

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provide pH in the range of 11.5 to 13.5. See Abstract. Surfactants are used in the compositions and preferred ones include lauryl sulphate, alkyl sulphonate, etc. See column 8, lines 19-30.

Specifically, the compositions contain 2% abrasive which are polypropylene particles, 0.25% Carbopol 695, 1.5% Laponite Rd, 1.25% sodium hypochlorite, 2% Hostpur SAS, 0.1% sodium silicate, 0.6% NaOH, and the balance water wherein the composition has a pH of 12.9. See page 11, lines 1-30. '996 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the broad teachings of '771 or '996 anticipate the material limitations of the instant claims.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luciani et al (US 6,268,325), Choy et al (US 5,554,321), EP 649,898, 96/35771, or GB 2,311,996 as applied to the rejected claims above, and further in view of Petri et al (US 6,114,298).

Luciani et al, Choy et al, '898, '771, or '996 are relied upon as set forth above. However, none of the references teach the use of polyacrylamide thickeners in addition to the other requisite components of the composition as recited by the instant claims.

Petri et al teach a microemulsion comprising a surfactant, an aqueous phase and droplets dispersed in said aqueous phase, said droplets comprising an essential oil or an active thereof. See Abstract. Additionally, the compositions may contain a shear-thinning polymeric thickener or mixture thereof; suitable polymer thickeners include

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polyacrylamide polymers, polycarboxylate polymers such as polyacrylates polymers, etc.

See column 12, line 60 to column 14, line 10.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a polyacrylamide polymer in the compositions taught by Luciani et al (US 6,268,325), Choy et al (US 5,554,321), EP 649,898, 96/35771, or GB 2,311,996, with a reasonable expectation of success, because Petri teaches the equivalence of a polyacrylamide polymer to a polycarboxylate polymer as a thickening agent in a similar composition and further, Luciani et al (US 6,268,325), Choy et al (US 5,554,321), EP 649,898, 96/35771, or GB 2,311,996 teach the use of polyacrylate polymers as thickening agents.

Claims 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/35771 or GB 2,311,996 as applied to claims above, and further in view of Luciani et al (US 6,268,325).

'771 or '996 are relied upon as set forth above. However, neither reference teaches the use of amine oxide or alkyl ether surfactants in addition to the other requisite components of the composition as recited by the instant claims.

Luciani et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an amine oxide or alkyl ether sulphate surfactant in the composition taught by '771 or '996, with a reasonable expectation of success, because Luciani et al teach the equivalence of alkyl sulphates to amine oxides and alkyl ether

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sulfates as surfactants in a similar cleaning composition and further, '771 or '996 teach the use of alkyl sulfate surfactants.

Response to Arguments

With respect to Luciani, Applicant states that the claims have been amended to necessarily include a colloid-forming clay in the compositions in amounts of less than 1% by weight which excludes the range of 1% to 10% by weight of a colloid-forming material as taught by Luciani. In response, note that, the instant claims recite "at least one colloid-forming clay in an amount up to 1% by weight" which would allow for the inclusion of 0 to 1% by weight of clay and would be inclusive of the endpoint 1%. Thus, 1% of a colloid-forming material as taught by Luciani would overlap with 1% of a colloid-forming clay as recited by the instant claims.

With respect to Choy and '898, Applicant states that both references teach that the use of common clays, for instance, will likely lead to a false body rheology, which at rest, will turn the composition very viscous. Furthermore, Applicant states that it is clear that the compositions disclosed by Choy and '898 expressly exclude clays which are common examples of colloid-forming materials. In response, note that, up to 1% by weight of a colloid-forming clay as recited by the instant claims allows for inclusion of 0 to 1% by weight of clay; clay is not a required component since up to 1% by weight reads on 0% by weight. Thus, the Examiner asserts that compositions which do not contain clay as taught by Choy and '898 overlap with 0% by weight clay as recited by the instant claims.

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With respect to WO '771 and GB '996, Applicant states that both of these references teach only the use of synthetic clays while "at least one colloid-forming clay" as recited by the instant claims is expressly intended to include clays from naturally occurring sources which the present applicants copiously demonstrate in their examples. In response, note that, the Examiner asserts that synthetic clays as taught by '771 and '996 would fall under the broad, generic category of colloid-forming clay as recited by the instant claims. There is no limitation present in the instant claims which requires that the colloid-forming clay be a natural clay or be a clay from naturally occurring sources. Furthermore, one skilled in the art would expect that the synthetic clays taught by '771 or '996 would resemble naturally occurring clay and have the same colloid-forming properties as naturally occurring clays since '771 or '996 teach that the synthetic smectite clays used resemble the natural clays of the hectorite class. Additionally, on page 5, lines 25-35 of the instant specification, it is stated that "commercially available clays..." are sold under various tradenames which indicates that the clays may be synthetic and commercially produced; nowhere in the specification does it define or require that the colloid forming clays are natural clays.

With respect to the rejection of claims 7 and 8 under 35 USC 103(a) using Luciani et al (US 6,268,325), Choy et al (US 5,554,321), EP 649,898, 96/35771, or GB 2,311,996 in combination with Petri et al (US 6,114,298), Applicant states that Petrie is wholly silent as to the necessity of a colloid-forming clay. In response, note that Petrie is a secondary reference relied upon for its teaching of a polyacrylamide polymer thickening agent. As set forth above, the Examiner asserts that one skilled in the art

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would have clearly been motivated to use a polyacrylamide polymer in the compositions taught by Luciani et al (US 6,268,325), Choy et al (US 5,554,321), EP 649,898, 96/35771, or GB 2,311,996, with a reasonable expectation of success, because Petri teaches the equivalence of a polyacrylamide polymer to a polycarboxylate polymer as a thickening agent in a similar composition and further, Luciani et al (US 6,268,325), Choy et al (US 5,554,321), EP 649,898, 96/35771, or GB 2,311,996 teach the use of polyacrylate polymers as thickening agents.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571)

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272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
August 7, 2006